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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048480
Party	Defendant AL-FAKHER FOR TABACCO TRADING & AGENCIES CO. LTD.
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Date	12/12/2008
Attachments	No.92048480 - Respondent's Opposition.pdf (7 pages)(379375 bytes) No.92048480 Declar CPham.pdf (2 pages)(86186 bytes) EX A.pdf (1 page)(7609 bytes) No.92048480 - Supp Resp's.pdf (24 pages)(1100456 bytes) EX B.pdf (1 page)(7554 bytes) No.92048480 CPham Ltr to NPatel.pdf (2 pages)(109140 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the matter of Registration No. 2782619
Issued on November 11, 2003*

SINBAD GRAND CAFE, LLC,

Petitioner,

vs.

AL-FAKHER FOR TOBACCO TRADING &
AGENCIES CO. LTD.,

Respondent

Cancellation No. 92048480

**RESPONDENT'S OPPOSITION TO
MOTION FOR SANCTIONS;
DECLARATION OF CHRISTOPHER Q.
PHAM IN SUPPORT THEREOF**

Respondent AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD
("Respondent," or, "Al-Fakher") herewith respectfully submits its Opposition to the Motion for
Sanctions (the "Motion") of Petitioner SINBAD GRAND CAFE, LLC ("Petitioner").

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner's Motion unfairly asks the Board to award sanctions against Respondent for an inadvertent and excusable failure to comply with an Order of October 28, 2008 (the "Order") from the Trademark Trial and Appeal Board ("TTAB," or, the "Board"). The Motion wrongfully alleges "willful disregard" and "dilatory conduct" on the part of Respondent. (*See* Motion, p. 4, ¶2.)

The unanticipated breakup of the law firm representing Respondent prevented receipt of the Order. Notice came only upon receipt of the Motion for Sanctions from the office of Petitioner's counsel, Natu J. Patel on December 1, 2008. As of the time Petitioner filed its sanctions Motion, Attorney Patel had notice of the new contact information for Respondent's counsel, Christopher Q. Pham. In fact, Mr. Patel emailed the Motion to Mr. Pham's new office email address. Mr. Patel did not extend the courtesy of notifying Respondent's counsel of his intent to file a Motion for Sanctions. Had Petitioner made a single attempt to informally resolve this issue prior to the filing of the instant Motion, the parties could have easily worked out an expeditious time for Respondent to provide the ordered discovery.

In fact, Petitioner's Motion is moot because as of the filing of this Opposition, the requested discovery responses had been served on Petitioner. In this regard, upon being apprised of the TABB's discovery order for the first time on December 1, Petitioner exercised good faith and expeditious due diligence in providing the ordered responses within 11 days, as oppose the 30 days granted by the TTAB. Therefore, there exists no justification whatsoever for the granting of monetary, evidentiary, or terminating sanctions given the excusable circumstances involved in this matter.

II. PERTINENT BACKGROUND FACTS

Sierra Network, Inc. ("Sierra"), the exclusive licensee for Respondent, filed a complaint against Akram Allos, principal officer of Petitioner's corporation, in the Central District of California- Western Division (*Sierra Network, Inc. v. Akram Allos, et al.*, Case. No. 2:07-cv-06104-DSF-CT) (the "Central District case") on September 20, 2007, for Petitioner's trademark infringement and other violations of Respondent's intellectual property rights in the trademark "Al- Fakher" (the "Mark"). In retaliation, Petitioner filed a petition to cancel the Mark on November 21, 2007 (the "Cancellation action").

Respondent was represented by former counsel during the above referenced filings. On May 28, 2008, Respondent retained the law firm of Gareeb|Pham, LLP as counsel. The firm

became attorney of record with the TTAB on June 4, 2008, as the Board has been earlier notified. Attorney Pham exercised due diligence to get up to speed in the TTAB action and the Central District case, and timely filed supplemental responses to Petitioner's first set of Special Interrogatories, on the record with the Board action. [See Declaration of Christopher Q. Pham ("Pham Decl."), ¶2].

During October 2008, Respondent's attorneys at the Los Angeles firm of Gareeb|Pham, LLP, were engaged in a partnership dispute which led to some upheaval and the dissolution of the partnership. These events required office relocation. (Pham Decl., ¶3).

Respondent's counsel, Attorney Christopher Q. Pham, ultimately established a new firm, Johnson & Pham, LLP, located in Woodland Hills, California. Its new office telephone, facsimile, internet and computer system were **not operational until November 11, 2008**, well after the Order was issued. As of the time Petitioner filed its sanctions Motion, Attorney Patel had notice of the new contact information for Respondent's counsel. Surprisingly, Attorney Patel did not attempt to 'meet and confer' to inform Attorney Pham of the Order so that discovery responses might be timely provided. Nor did Mr. Patel otherwise attempt to resolve the issue with counsel for Respondent prior to taking this unnecessary and aggressive step.

On December 9, 2008, Christopher Pham sent a 'meet and confer' letter to Mr. Patel requesting he withdraw the Motion and notifying him that further supplemental discovery responses would immediately be provided. (Pham Decl., ¶4, Letter from Mr. Pham to Mr. Patel, Exhibit "A").

III. ARGUMENT

A. Petitioner's Motion for Sanctions Continues the Retaliatory Conduct Engaged in to Obscure the Charges of Infringement of Respondent's Mark.

Petitioner has chosen to retaliate once again as a response to the Central District trademark infringement suit instituted by Sierra against Akram Allos. Following its being named as the defendant, Petitioner retaliated by filing a petition to cancel Sierra Network, Inc.'s

registration in the trademark “Al-Fakher” on November 21, 2007. Without a genuine defense to the claims in the Central District lawsuit, Petitioner was destined to be found an infringer. Adjudication on the merits of the matter was thus avoided and Petitioner chose the evasive action of filing a notice of cancellation of Respondent’s Mark.

Petitioner has been unsuccessful to date in the Central District case and in the TTAB Cancellation action as no genuine evidence has been produced to support Petitioner’s claims to the Mark. In fact, Petitioner’s only contention of ownership is to cite uses of similar marks solely in a foreign territory and not in the United States. Trademark rights in the United States are considered against *prior use*. The only date of first use that should be considered in the Cancellation action is the date of first use in commerce in the United States. It is the United States Trademark registration that Petitioner is seeking to cancel. *See J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition* (4th Ed. 2000) §29:25 at 29-55 (a mark exists only under the laws of each sovereign nation).

It appears that the absence of evidence has led Petitioner’s counsel to follow the adage that ‘*the best defense is a good offense.*’ While counsel for Petitioner continues to pursue an untenable Cancellation action, he has engaged in discovery abuse by his repeated unreasonable objections, and by his withholding of notice of the Board’s Order to Compel from Respondent’s counsel. The question arises whether Mr. Patel planned to ambush Respondent’s counsel into missing a response deadline in order to further retaliate with the sanctions Motion. The manner in which the sanctions Motion has been brought does not comply with the affirmative duty imposed on attorneys to engage in pretrial discovery in a responsible manner under both *Federal Rules of Civil Procedure* and 37 C.F.R. § 2.120 of the trademark rules.

B. Petitioner’s Motion for Sanctions is Improperly Brought as No Bad Faith or Willful Abuse Can be Ascribed to Respondent or Respondent’s Counsel.

Petitioner's Motion fails to distinguish under 37 C.F.R. §2.120(g) when "a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery," that sanctions are designed for *bad faith* or *willful* failure or other improper intent.

The Ninth Circuit has vacated sanctions awards where the moving party failed to provide sufficient proof of the requisite intent. In *Zambrano v. City of Tustin*, 885 F.2d 1473 (9th Cir. 1989), plaintiff's counsel negligently failed to comply with local court rules that required admission to the district court bar and was sanctioned \$3,717.88 for jury fees and inconvenience caused to the court and \$2,525 for defendants' attorney's fees. *Id.* at 1475. The sanctions were vacated because the district court may not sanction mere "inadvertent" conduct. *Id.* at 1485.

Bad faith on the part of Respondent or its counsel cannot be established by Petitioner and sanctions are unwarranted. Similarly, in *Yagman v. Republic Ins.*, 987 F.2d 622 (9th Cir. 1993), the Ninth Circuit vacated sanctions where there was no evidence that the attorney had "acted in bad faith or intended to mislead the court." *Id.* at 628.

Specific findings of bad faith or conduct tantamount to bad faith may warrant sanctions. *Fink v. Gomez*, 239 F.3d 989, 993-4 (9th Cir.2001). Further, sanctions are available for "a variety of types of willful actions, including recklessness when combined with an additional factor such as frivolousness, harassment, or an improper purpose." *Id.* at 994. *See also, Tuttle v. Combined Ins. Co.*, 222 F.R.D. 424, 428 (E.D. Cal. 2004) ("In order to impose sanctions under its inherent power, the court must make a specific finding that the attorney acted in bad faith.") Sanctions under Rule 11 of the *Federal Rules of Civil Procedure* are applied when a pleading which has been filed "is frivolous, legally unreasonable, or without factual foundation...." *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir.1986).

The impossibility of the circumstances preventing Respondent's counsel from receiving notice of the Order and the decision by Mr. Patel not to provide a courtesy notice to Mr. Pham

cannot reasonably be regarded by the Board as “willful evasion” (*see* Motion, p. 3, ¶3), or the type of misconduct contemplated by 37 C.F.R. §2.120(g)(1) or the federal rules.

Petitioner would be better served to provide the Board with valid evidence of priority of use in the United States of the Mark. “It must be noted that in a cancellation proceeding, as distinguished from an *ex parte* proceeding, where long established, valuable rights are involved, cancellation must be granted with due caution and only after a most careful study of all the facts.” *In re Myers*, 201 F.2d 379. The absence of probative evidence of ownership of the Mark renders the Cancellation action disingenuous at best, and, along with the sanctions Motion, retaliatory. The Board is not a punitive commission but an adjudicator of disputes. This Opposition anticipates that the Board will deny the Motion and encourage a legitimate and responsible adversarial process to resolve the Cancellation action.

C. The Sanctions Motion is Moot as Respondent has Provided the Requested Discovery Responses.

With notice of the Order received a mere 12 days ago, Respondent demonstrates its good faith in quickly providing Petitioner with discovery responses. (Pham Decl., ¶5). Respondent would prefer to have had actual notice of the Order so that these responses could have met the Order’s 30-day time period.

Scrutiny of Petitioner’s discovery objections reveal that Petitioner repeats many previously made objections, with grossly overbroad demands for responses and documents which Respondent does not possess and is unable to provide. Contrary to the allegations asserted in the Motion, it is not Respondent who is committing discovery abuse, it is counsel for Petitioner whose conduct is appropriately characterized as abusive. Each of Attorney Patel’s repeated and irrelevant discovery objections fails to meet the standards of a “nonfrivolous argument,” appears designed to “harass” rather than lead to discoverable evidence, and is ultimately “unreasonable” and “unduly burdensome” to Respondent and the efficiency of the judicial process. *Fed R. Civ. Pro.* § 26(g); *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass’n*, 365 F.Supp. 975 (E.D.Pa.1973).

**D. The Sanctions Motion is Improper in Ascribing a Former Counsel's Alleged
Discovery Abuses to Respondent's Present Counsel of Record.**

The Board is requested to note that much of the Motion complains of discovery issues which occurred *prior* to the time Mr. Pham became counsel of record for Respondent. *See* Motion, p. 1, ¶2; p. 2, ¶¶1, 2. Again, it is Petitioner's motive which is suspect. What reasonable purpose would Mr. Patel have in attempting to attach to Mr. Pham the discovery abuses purportedly committed by former counsel? The sanctions statutes do not intend that alleged misconduct of a former attorney requires the imposition of sanctions on Respondent and its present counsel. Petitioner's counsel overreaches and wastes the Board's time and attention with these attenuated and improper arguments.

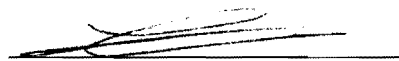
IV. CONCLUSION

Respondent is hopeful the Board will acknowledge that inadvertence and excusable neglect through no fault of Respondent or its counsel are the reason for the failure to respond timely to the Order. The Board is respectfully requested to encourage Petitioner's counsel to comply with the purpose and spirit of the discovery rules which are designed to foster responsible and appropriate conduct and cooperation and respect among counsel as well as the parties to a dispute. Respondent fully acknowledges and appreciates the obligation noted in the Order "to cooperate with one another so that this case may proceed in an orderly manner within reasonable time constraints." *See* Order, p. 2, ¶1.

For the reasons contained herein, Respondent request the Motion for Sanctions be denied in its entirety.

Dated: December 12, 2008

Respectfully Submitted,



Christopher Q. Pham
JOHNSON & PHAM, LLP
Attorney for Respondent
AL-FAKHER FOR TOBACCO TRADING
& AGENCIES CO. LTD.

DECLARATION OF CHRISTOPHER Q. PHAM

I, Christopher Q. Pham, declare as follows:

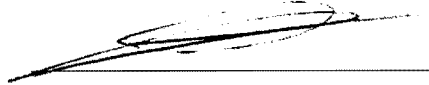
1. I am an attorney at law and a partner at the law firm of Johnson & Pham, LLP, counsel of record for Respondent AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD ("Respondent"). I make this declaration in support of Respondent's Opposition to Motion for Sanctions filed by Petitioner SINBAD GRAND CAFÉ, LLC ("Petitioner"). I have personal knowledge of the information set forth in the declaration and would and could testify to the facts stated if called upon.
2. Respondent was represented by former counsel during the filing of the Central District case and the instant Cancellation action. On May 28, 2008, Respondent retained the law firm of Gareeb|Pham, LLP as counsel. The firm became attorney of record with the TTAB on June 4, 2008, as the Board has been earlier notified. I exercised due diligence to get up to speed in the TTAB action and the Central District case, and timely filed supplemental responses to Petitioner's first set of Special Interrogatories, on the record with the Board action.
3. During October 2008, my firm of Gareeb|Pham, LLP, was engaged in a partnership dispute which led to some upheaval and the dissolution of the partnership. These events required me to relocate my office.
4. My new office telephone, facsimile, internet and computer system were **not operational until November 11, 2008**, well after the Order was issued. As of the time Petitioner filed its sanctions Motion, Attorney Patel had notice of my new contact information. Attorney Patel did not attempt to 'meet and confer' to inform me of the Order. Nor did Mr. Patel attempt to resolve the issue with me prior to taking this unnecessary and aggressive step. On December 9, 2008, I sent a 'meet and confer' letter to Mr. Patel requesting he withdraw the Motion and notifying him that further supplemental discovery responses would immediately be provided. With notice of the Order received a mere 12 days ago, Respondent demonstrates its good faith in quickly providing Petitioner with discovery responses.
5. In demonstration of good faith, I am herewith providing Petitioner with supplemental discovery responses. With notice of the Order received a mere 12 days ago,

DECLARATION OF CHRISTOPHER Q. PHAM
IN SUPPORT OF OPPOSITION TO MOTION FOR SANCTIONS

Respondent demonstrates its good faith in quickly providing Petitioner with discovery responses. A True and Correct copy of Supplemental Responses to the Request for Production of Documents is attached hereto as Exhibit "B."

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct and to the best of my knowledge.

Executed on the 12th day of December in Woodland Hills, California.

A handwritten signature in black ink, appearing to read "Christopher Q. Pham", is written over a horizontal line.

Christopher Q. Pham

DECLARATION OF CHRISTOPHER Q. PHAM
IN SUPPORT OF OPPOSITION TO MOTION FOR SANCTIONS

EXHIBIT A

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the matter of Registration No. 2782619
Issued on November 11, 2003*

SINBAD GRAND CAFE, LLC,

Petitioner,

vs.

AL-FAKHER FOR TOBACCO TRADING &

AGENCIES CO. LTD.,

Respondent

Cancellation No. 92048480

**RESPONDENT'S FURTHER
SUPPLEMENTAL RESPONSES TO
PETITIONER'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS**

PROPOUNDING PARTY: Petitioner SINBAD GRAND CAFÉ, LLC

RESPONDING PARTY: Respondent AL-FAKHER FOR TOBACCO TRADING &
AGENCIES CO. LTD.

SET NO.: One (1)

Respondent Al-Fakher for Tobacco Trading & Agencies Co., Ltd., pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the *Federal Rules of Civil Procedure*, hereby provides further supplemental responses to Petitioner Sinbad Grand Café, LLC's First Set of Requests for Production of Documents and Things.

GENERAL STATEMENT

Respondent has not completed Respondent's investigation of the facts relating to this case, nor has Respondent completed discovery or preparation for trial. These responses are made on the basis of information presently available to Respondent. There may be further information of which Respondent is unaware. Therefore, Respondent reserves the right to offer or rely at trial on subsequently discovered information.

These responses are made solely for the purpose of this action. Respondent reserves the right to object to the use of any response in any other action. Each response is given subject to all appropriate objections, including but not limited to, objections concerning competency, relevancy, materiality, propriety, admissibility, the attorney-client privilege and the work-product doctrine, which would require the exclusion of any statements contained herein where made by a witness present and testifying in court. All such objections and grounds therefore are reserved and may be interposed at the time of trial. By providing information in response to any requests, Respondent does not intend to authorize the use of such information in any action other than this one, nor does Respondent waive any right Respondent may have to object to further use of the information provided in this or any other action, and thus reserves any and all rights Respondent may have to object to such further use.

No incidental or implied admissions are intended by these responses. Respondent's responses or objections to any request are not intended as an admission of any purported facts set forth or assumed by such request. Respondent's response to any request is not intended as a waiver by Respondent of any objection to that request or any other request.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 4:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession or control of any further documents responsive to this Request. Further, the documents requested are not discoverable as they concern use of the disputed Mark outside of the United States. The only use of the Mark that is relevant to discovery and to the Cancellation action is use in commerce in the United States. It is the United States Trademark registration that Petitioner is seeking to cancel. *See J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition* (4th Ed. 2000) §29:25 at 29-55 (a mark exists only under the laws of each sovereign nation).

As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 8:

Pursuant to a diligent search and reasonable inquiry, and in addition to the documents previously produced, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: pages from www.alfakher.com website (Bates Stamps Nos. 00278-00292). As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 9:

Pursuant to a diligent search and reasonable inquiry, and in addition to the documents previously produced, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: pages from www.alfakher.com website (Bates Stamps Nos. 00278-00292). As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 10:

Pursuant to a diligent search and reasonable inquiry, and in addition to the documents previously produced, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: pages from www.alfakher.com website (Bates Stamps Nos. 00278-00292). As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 11:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession or control of any further documents responsive to this Request. As discovery and investigation are

continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 12:

Pursuant to a diligent search and reasonable inquiry, and in addition to the documents previously produced, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: pages from www.alfakher.com website (Bates Stamps Nos. 00278-00292). As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 16:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession or control of any further documents responsive to this Request. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 17:

Pursuant to a diligent search and reasonable inquiry, and in addition to the documents previously produced, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: pages from www.alfakher.com website (Bates Stamps Nos. 00278-00292). As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 24:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to

supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 25:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 27:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 29:

Pursuant to a diligent search and reasonable inquiry, other than the documents already provided in response to previous Requests, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: pages from www.alfakher.com website (Bates Stamps Nos. 00278-00292). Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to produce these documents. As discovery and investigation are continuing,

Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 30:

Pursuant to a diligent search and reasonable inquiry, Respondent is not in possession or control of any further documents responsive to this Request. To the extent the Request concerns licenses, agreements, or other documents of foreign transactions related to the Mark, the documents requested are not discoverable. The only such documents concerning the Mark that are relevant to discovery and to the Cancellation action are United States licenses and documents of this nature. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 31:

Pursuant to a diligent search and reasonable inquiry, and in addition to the documents previously produced, Respondent is not currently in possession, control and/or custody of documents responsive to this request other than publicly available documents accessible to Petitioner. Such responsive document would be the Complaint filed with the United States District Court, Central District for the lawsuit entitled *Sierra Network v. Hamade, et al.*, Case No. CV 07-6105. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 41:

Pursuant to a diligent search and reasonable inquiry, other than the documents already provided in response to previous Requests, Respondent is not currently in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to produce these documents. As discovery and investigation are continuing, Respondent reserves the right to

supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 43:

Pursuant to a diligent search and reasonable inquiry, other than the documents already provided in response to previous Requests, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 45:

Pursuant to a diligent search and reasonable inquiry, other than the documents already provided in response to previous Requests, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 46:

Pursuant to a diligent search and reasonable inquiry, other than the documents already provided in response to previous Requests, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to

supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 47:

Pursuant to a diligent search and reasonable inquiry, other than the documents already provided in response to previous Requests, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 49:

Pursuant to a diligent search and reasonable inquiry, other than documents already provided in response to previous Requests, Respondent is not in possession, control and/or custody of documents responsive to this request. Respondent is in the process of securing responsive documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to produce these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement responses should Respondent's continued investigation reveal further information responsive to this request.

FURTHER SUPPLEMENTAL RESPONSE TO REQUEST NO. 50:

Pursuant to a diligent search and reasonable inquiry, Respondent produces all non-privileged, non-work product documents responsive to this request that are within its possession, control and/or custody: A translation of the word Al-Fakher (Bates Stamp No. 51); and The United States Patent and Trademark Office Application and Registration of the trademark by Bassam Hamade (Bates Stamps 184-193). Other than documents already produces for previous Requests, Respondent is not in possession, control and/or custody of documents responsive to

this request. Respondent is in the process of securing documents from Al-Fakher in UAE, and due to the extremely laborious task of gathering these documents, requests additional time, until January 10, 2009, to provide these documents. As discovery and investigation are continuing, Respondent reserves the right to supplement its responses should Respondent's continued investigation reveal further information responsive to this request.

Dated: December 12, 2008

JOHNSON & PHAM, LLP

By: 

Christopher Q. Pham, Esq.
Attorneys for Respondent
AL-FAKHER FOR TOBACCO
TRADING & AGENCIES CO.
LTD.



Al Fakher FAQ

The History

Al Fakher is a brand of tobacco products that has been around since the 1970s. It is known for its high quality and variety of flavors. The brand has a long history of being a popular choice among smokers in the Middle East and North Africa.

Introduction

Al Fakher is a brand of tobacco products that has been around since the 1970s. It is known for its high quality and variety of flavors. The brand has a long history of being a popular choice among smokers in the Middle East and North Africa.

1. Why many visit in quantity?

Al Fakher is a brand of tobacco products that has been around since the 1970s. It is known for its high quality and variety of flavors. The brand has a long history of being a popular choice among smokers in the Middle East and North Africa.

2. Why is it the primary place?

Al Fakher is a brand of tobacco products that has been around since the 1970s. It is known for its high quality and variety of flavors. The brand has a long history of being a popular choice among smokers in the Middle East and North Africa.

3. Compared with to other tobacco brands?

Al Fakher is a brand of tobacco products that has been around since the 1970s. It is known for its high quality and variety of flavors. The brand has a long history of being a popular choice among smokers in the Middle East and North Africa.

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Our Mission

At Al Fakher Corporation we strive to manufacture and market premium quality Tobacco Products.

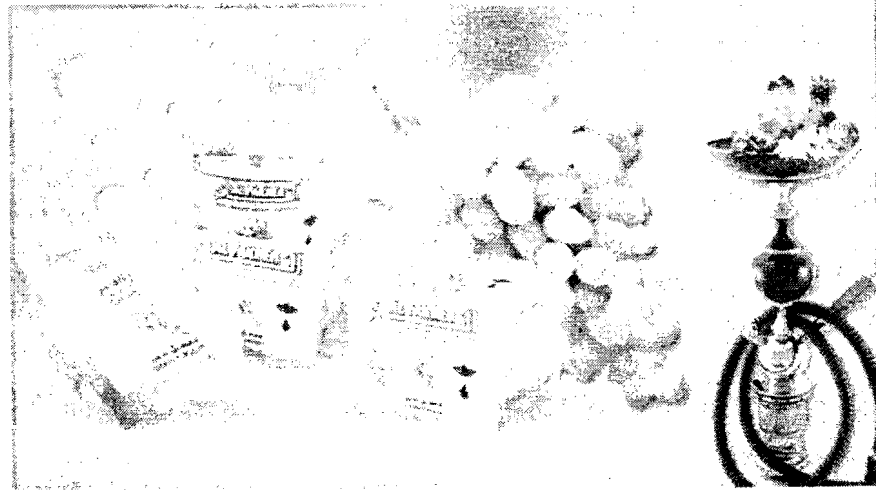


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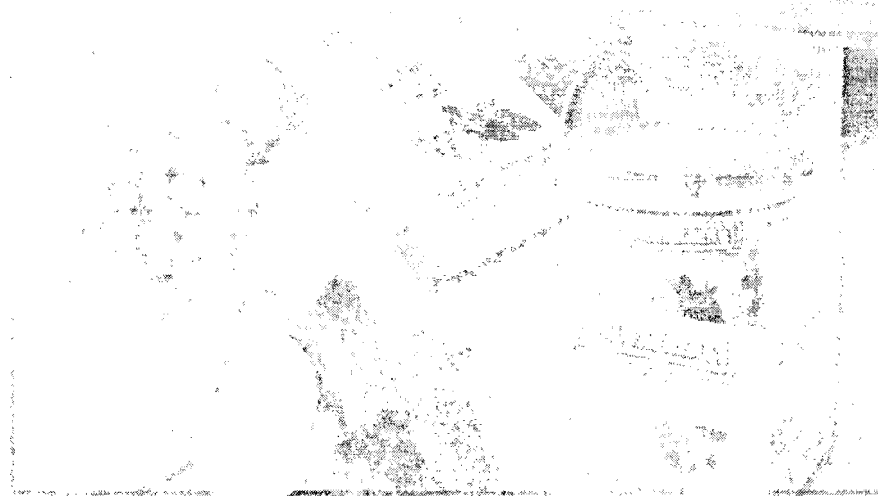
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**ET FOR
CH 50g.**

50 Grams

**A HIGH QUALITY
RESEALABLE SACHET
FOR ALL 1000, 500 & 250g
PACKAGES AND
ALL FLAVOURS**

1000 Grams

ENSURE THE PRESENCE OF THE SPECIAL SECURITY TAPE
ON ALL THE "Genuine Counterfeit" FLAVOURS

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The Alo Argeleh Call Center

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In Jordan Al-Fakher company started an initiative called "Alo Argeleh" which allows customers to call into the "Alo Argeleh" call center and request the delivery of Al-Fakher ready to smoke Argeleh, all flavors of Al-Fakher molasses, coal, disposable hoses and other Argeleh accessories.



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Al Fakher World Wide Distributors
Official: Sierra Network, Inc.

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Our Packaging

- **Our 50g Packages**

Each 50g are packed in an exclusively designed sealed aluminum sachet, inside a carton packet wrapped in a thermo plastic wrap and sealed with a specially designed security tear tape for easy opening. Each 10 packs are packed in an outer box , and each 12 outers are packed in a corrugated carton master case.

- **Our 250g Packages**

Each 250g units are packed in a special re-sealable plastic laminated aluminum sachet. These bags are stacked inside an exclusively designed plastic bucket with cover. Each bucket is placed in a carton box with a thermo plastic wrap. Each 12 boxes are placed in a master case.

- **Our 500g Packages**

Each 500g are packed in a special re-sealable plastic laminated aluminum sachet. The plastic bag is placed in a re-sealable plastic jar. Each 24 units are packed in a corrugated carton master case.

- **Our 1kg Packages**

Each 1kg unit is packed in a special re-sealable plastic laminated aluminum sachet. The plastic bag is placed in a re-sealable plastic jar. Each 12 unit jars are grouped together and are packed in a corrugated carton master case.

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Our Flavours

We provide tobacco in a wide variety of flavors including grape, rose, apple, strawberry, two apple, orange, lemon, melon, mint, cocktail, banana, cherry, apricot, cappuccino, coconut, mango, pineapple, plum, licorice, cola, jasmine, soft black, cinnamon, berry, pear, pipe, honey, grenadine, cigar, vanilla, gum, chocolate, water melon, and kiwi.

These flavors are available in packages of 50g, 250g, 500g, and 1kg.

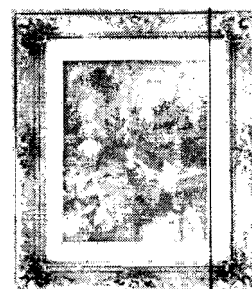
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Our History

In response to people's love for the hooka, Alfakher Corporation was established 7 years ago, as a limited liability private company and is currently owned by a major International Tobacco and Cigarettes corporation operating in the Middle East. Its aim is to convert the Middle Eastern Hooka or "Shisha" tradition into a universal phenomenon, and it achieves this goal through the production of a wide range of tobacco products "Moasel" in a wide variety of flavors. Over the years Alfakher was successfully able to expand its markets so that today it has agents operating in over 34 regions in four continents. The firm currently employs 80 employees all of whom are specialized in their respective fields. Positioning itself as a major advocate of development, Al-Fakher provides continuous community support in a number of ways, including financial and service related contributions to local charitable organizations.



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Al Fakher FAQ

The Factory

1. How many years in business?
2. When did the factory start?
3. Comparison to other factories today?
4. What is the company's goal?
5. Family owned or public?
6. Where is it located? Headquarters? Other sales offices? Where is it produced and distributed?
7. How many employees?

The Tobacco

1. How many different types of products?
2. Comparison to other tobacco brands?
3. Where in the world is it marketed?

1. How many years in business?

Alfakher company is currently in its seventh year of production.

2. When did the factory start?

15/9/1999

3. Comparison to other factories today?

Existing molasses factories can be categorized into two types.

The first type are the factories that were established since many years in Egypt. They are experienced in the manufacturing of Black Molasses.

The second type are those companies that were established in the last 8 years. It started to become popular and became popular. Both categories of factories have the same experience in handling tobacco.

Compared to all other companies, Alfakher has secured its place in the market.

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Al Fakher Products Flavours

CAPRI	>>More	JEWELL	>>More	EMERALD	>>More
SANTAL	>>More	BUTTER	>>More	TIGER	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More
CITRUS	>>More	TIGER	>>More	CIGARETTE	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More
SANTAL	>>More	BUTTER	>>More	TIGER	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More
CITRUS	>>More	TIGER	>>More	CIGARETTE	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More
SANTAL	>>More	BUTTER	>>More	TIGER	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More
CITRUS	>>More	TIGER	>>More	CIGARETTE	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More
SANTAL	>>More	BUTTER	>>More	TIGER	>>More
SANDALWOOD	>>More	FANTASY	>>More	SUGAR	>>More



AL FAKHER FAQ

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What is Al Fakher?

Al Fakher is a brand of tobacco products, including cigarettes and cigars, known for its quality and flavor.

Al Fakher products are available in various flavors, including traditional tobacco, fruit, and menthol.

What are the benefits of Al Fakher?

Al Fakher products are made from high-quality tobacco and are known for their smooth taste and long-lasting flavor.

What are the different flavors of Al Fakher?

Al Fakher offers a wide variety of flavors, including traditional tobacco, fruit, and menthol.

What are the different products of Al Fakher?

Al Fakher offers a variety of products, including:

What are the different sizes of Al Fakher products?

Al Fakher products are available in various sizes, including:

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EXHIBIT B

EXHIBIT B

JOHNSON & PHAM, LLP

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December 9, 2008

Via Facsimile (949)955-1877 E-Mail

Natu J. Patel, Esq.
The Patel Law Firm
2532 Dupont Drive
Irvine, California 92612

*Re: Sinbad Grand Café, LLC v. Al-Fakher for Tobacco Trading & Agencies;
Cancellation No. 92048480*

Mr. Patel:

This letter serves to memorialize our conversation on December 3, 2008, regarding Petitioner's Motion for Sanctions. As we discussed, upon receipt of your email correspondence of December 1, attaching Petitioner's Motion, I was first made apprised of the TTAB's ruling on Petitioner's Motions to Compel. Until this time, I did not receive any notices OF the Ruling mailed October 28, 2008, from the TTAB relating to the discovery motions.

As we discussed, I have been embroiled in difficult law firm partnership dissolution since late September 2008. From October 30 through November 5, I relocated my office and staff from Gareeb | Pham, LLP, located 707 Wilshire Boulevard, 53rd Floor, Los Angeles, to my new office and partnership at Johnson & Pham, LLP, located at 6355 Topanga Canyon Boulevard, Suite 115, Woodland Hills, California.

During the relocation of my office, my staff and I worked without access to a land line telephone service, facsimile, internet service, emails, and computers. On November 5, I obtained service to my new office's telephone and facsimile lines. On November 10, I obtained email services at my new office.

It appears that the TTAB ruling was mailed out on October 28 from Alexandria, Virginia, to my former address, which I do not dispute. I simply did not receive any notice whatsoever of the Ruling until I received your Motion for Sanctions on December 1. Moreover, I was not advised by my previous partner of any receipt of the Ruling from the TTAB.

As I informed you, and as you empathized due to your personal experiences, my partner dissolution was no where close to being amicable. Although I take full responsible of staying

knowledgeable of all rulings, I request that you take into consideration the upheaval of my office and staff.

Given the circumstances, I am surprise that Petitioner refused my request to withdraw its Motion for Sanction. Moreover, as I received no meet and confer communications from your office, I am also surprise that Petitioner filed its Motion without attempting to informally resolve this issue. At the time of your office's filing of the Motion for Sanctions, my office had given you notice of the change of my firm's name and address. Indeed, you emailed the Motion to may new email address.

Lastly, although I agreed to provide you with expedited responses to the few Requests for Production of Documents the TTAB granted, you continued to refuse to withdraw Petitioner's Motion. Petitioner appears to being taking advantage of an unfortunate circumstance relating to my law firm dissolution. Petitioner's and your approach to litigation would be unfairly prejudicial to my client as you are penalizing them for my business situation.

Again, I request that you withdraw your Motion for Sanctions. My office will be producing to you further supplemental responses to the Request for Production of Documents by no later than Friday, December 12, 2008.

I hope to obtain your cooperation and professional courtesy in this matter. Please contact me if you have any questions or comments relating to this latter.

Sincerely,



JOHNSON & PHAM, LLP
Christopher Q. Pham